

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA  
3

4 Herbert Moreira-Brown,  
5 Plaintiff  
6 v.  
7 Las Vegas Review Journal, Inc. et al.,  
8 Defendants  
9

2:16-cv-02002-JAD-VCF

**Order Dismissing All Claims**

[ECF No. 7, 34, 73]

10 Maryland attorney April Ademiluyi sued Nevada attorney David Phillips in Maryland,  
11 alleging that Phillips and New York attorney Herbert Moreira-Brown drugged and sexually  
12 assaulted her and an unnamed colleague at a conference in Florida.<sup>1</sup> After Phillips successfully  
13 had the case transferred to Nevada, journalist Carri Geer Thevenot caught wind of it and reported  
14 on the allegations in the *Las Vegas Review-Journal (LVRJ)*.<sup>2</sup> Claiming that the allegations  
15 against him in Ademiluyi's suit are false and that Thevenot's article further defamed him and  
16 caused him emotional distress, Moreira-Brown filed this action against Ademiluyi, Thevenot,  
17 and the *LVRJ* for defamation and intentional and negligent infliction of emotional distress.<sup>3</sup>

18 All defendants move to dismiss.<sup>4</sup> Because I find that this court lacks personal jurisdiction  
19 over Ademiluyi, and I conclude that Moreira-Brown's claims against Thevenot and the LVRJ  
20 (the Media Defendants) are barred by Nevada's anti-SLAPP laws, I grant the motions to dismiss  
21 in part, dismiss all claims, and close this case.  
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24 <sup>1</sup> ECF No. 7-4.  
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26 <sup>2</sup> ECF No. 25 at 33.

27 <sup>3</sup> ECF No. 1.

28 <sup>4</sup> ECF No. 7, 34. I find both motions suitable for disposition without oral argument. L.R. 78-1.

1 **Discussion**

2 **A. April Ademiluyi's Motion to Dismiss**

3 Ademiluyi offers two arguments for dismissal: (1) this court lacks personal jurisdiction  
4 over her and (2) the communications on which Moreira-Brown's claims are based are privileged  
5 and not actionable.<sup>5</sup> Because I find that this court lacks personal jurisdiction over Ademiluyi, I  
6 grant the motion on that basis and do not reach her remaining arguments.

7 The due-process clause of the Fourteenth Amendment limits a court's power to bind a  
8 nonresident defendant to a judgment in the state in which it sits.<sup>6</sup> As the United States Supreme  
9 Court explained in the pathmaking *International Shoe* opinion, "[a]lthough a non resident's  
10 physical presence within the territorial jurisdiction of the court is not required" for the exercise of  
11 personal jurisdiction, "the nonresident generally must have 'certain minimum contacts such that  
12 the maintenance of the suit does not offend traditional notions of fair play and substantial  
13 justice.'" <sup>7</sup>

14 "There are two forms of personal jurisdiction that a forum state may exercise over a  
15 nonresident defendant—general jurisdiction and specific jurisdiction."<sup>8</sup> Moreira-Brown does not  
16 contend that Ademiluyi is subject to the general jurisdiction of this court based on systematic  
17 contacts. His arguments suggest specific jurisdiction: he argues that "[t]he instant action arises  
18 directly out of [Ademiluyi's] acts in [Nevada], both by virtue of the suit against Phillips, in  
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20 <sup>5</sup> ECF No. 34.

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22 <sup>6</sup> *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980). Because Nevada's  
23 long-arm statute, Nev. Rev. Stat. § 14.065, reaches the limits of due process established by the  
24 United States Constitution, *Viega GmbH v. Eighth Jud. Dist. Ct.*, 328 P.3d 1152, 1156 (Nev.  
25 2014), I apply the federal jurisdictional analysis. See *Boschetto v. Hansing*, 539 F.3d 1011, 1015  
(9th Cir. 2008) ("When no federal statute governs personal jurisdiction, the district court applies  
the law of the forum state.").

26 <sup>7</sup> *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014) (quoting *International Shoe Co. v. Washington*,  
27 326 U.S. 310, 316 (1945) (internal quotations and ellipsis omitted).

28 <sup>8</sup> *Boschetto*, 539 F.3d at 1016.

1 which [Moreira-Brown] is mentioned, and of course, going beyond that by defaming [him] in a  
2 Las Vegas newspaper article.”<sup>9</sup>

3 Specific jurisdiction depends on an “activity or an occurrence that takes place in [or is  
4 purposely directed at] the forum State and is therefore subject to the State’s regulation.”<sup>10</sup> “In  
5 contrast to general, all-purpose jurisdiction, specific jurisdiction is confined to adjudication of  
6 ‘issues deriving from, or connected with, the very controversy that establishes jurisdiction.’”<sup>11</sup> In  
7 the Ninth Circuit, we apply the three-prong test from *Schwarzenegger v. Fred Martin Motor*  
8 *Company* for analyzing a claim of specific jurisdiction:

9 (1) The non-resident defendant must purposefully direct [her]  
10 activities or consummate some transaction with the forum or  
11 resident thereof; or perform some act by which [s]he purposefully  
12 avails [her]self of the privilege of conducting activities in the  
13 forum, thereby invoking the benefits and protections of its laws;

12 (2) the claim must be one which arises out of or relates to the  
13 defendant’s forum-related activities; and

14 (3) the exercise of jurisdiction must comport with fair play and  
15 substantial justice, i.e. it must be reasonable.<sup>12</sup>

15 “The plaintiff bears the burden of satisfying the first two prongs of the test. If [he] fails to satisfy  
16 either of these prongs, personal jurisdiction is not established in the forum state.”<sup>13</sup> When a  
17 district court acts on a defendant’s motion to dismiss for lack of personal jurisdiction without  
18 holding a hearing, “the plaintiff need only make a prima facie showing of jurisdictional facts to  
19 withstand” the challenge.<sup>14</sup> Because I find that an evidentiary hearing would not change the  
20 outcome of this motion, my inquiry focuses on whether Moreira-Brown has made a prima facie  
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22 <sup>9</sup> ECF No. 43 at 9.

23 <sup>10</sup> *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011).

24 <sup>11</sup> *Id.*

25 <sup>12</sup> *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004).

26 <sup>13</sup> *Id.* (internal citations omitted).

27 <sup>14</sup> *Mavrix Photo, Inc. v. Brand Tech., Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011).

1 showing that the court has jurisdiction over Ademiluyi, and I accept all uncontroverted facts as  
2 true.<sup>15</sup>

3 **1. Ademiluyi did not waive her personal-jurisdiction arguments by accepting**  
4 **service.**

5 As his first line of defense against Ademiluyi’s personal-jurisdiction challenge, Moreira-  
6 Brown notes that “Ademiluyi executed a waiver of service” and cites a vacated district court  
7 decision for the proposition that “a waiver of service establishes personal jurisdiction over” the  
8 waiving defendant.<sup>16</sup> This principle—let alone this quote—appears nowhere in the case that  
9 Moreira-Brown cites for this proposition. Plus, it’s just wrong. FRCP 4(d)(5) expressly states  
10 that “[w]aiving service of a summons does not waive any objection to personal jurisdiction or to  
11 venue.”<sup>17</sup> So Ademiluyi did not lose her personal-jurisdiction objection by waiving service of  
12 process.

13 **2. Ademiluyi did not waive her jurisdictional challenge by maintaining a**  
14 **lawsuit in this forum against Phillips.**

15 Moreira-Brown next meets Ademiluyi’s jurisdictional challenge by pointing to two acts  
16 that she had to know “were acts undertaken in this forum with predictable consequences.”<sup>18</sup> The  
17 first act is Ademiluyi’s prosecution of her lawsuit against Phillips. “If the Defendant resorts to  
18 the Courts of the forum state as plaintiff,” he reasons, “it must be subject to the jurisdiction of the  
19 Federal Court as defendant in the present case.”<sup>19</sup> But I cannot conclude that Ademiluyi’s  
20 maintenance of her lawsuit against Phillips in this forum subjects her to Moreira-Brown’s suit  
21 here. Although “there is nothing unfair, or violative of due process, about requiring a party that  
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23 <sup>15</sup> *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006).

24 <sup>16</sup> ECF No. 43 at 8 (purporting to quote *Huffy Corp. v. Overlord Indus.*, 246 F. Supp. 2d 1093 (D.  
25 Nev. 2003), vacated at 2003 WL 24107758 (July 3, 2003)).

26 <sup>17</sup> Fed. R. Civ. P. 4(d)(5).

27 <sup>18</sup> ECF No. 43 at 9.

28 <sup>19</sup> ECF No. 43 at 11.

1 has affirmatively sought the aid of our courts with regard to a particular transaction to submit to  
2 jurisdiction in the same forum as a defendant with regard to the same transaction with the same  
3 party,”<sup>20</sup> this rule does not apply here.

4 First, the “same party” element is lacking because Ademiluyi did not sue Moreira-Brown,  
5 just Phillips. But more importantly, Ademiluyi did not seek the affirmative aid of this forum.  
6 Ademiluyi filed her lawsuit against Phillips in the U.S. District Court for the District of  
7 Maryland.<sup>21</sup> On Phillips’s motion to dismiss, the court transferred the case to this district  
8 because Phillips lived in Nevada.<sup>22</sup> Ademiluyi took affirmative action in Nevada only after that  
9 suit was transferred from her chosen forum—Maryland. As the Ninth Circuit recognized in *Dow*  
10 *Chemical Company v. Calderon*,<sup>23</sup> finding that participation in another forum-based lawsuit  
11 waives a personal-jurisdiction objection requires “that the party objecting to jurisdiction . . . was  
12 also *affirmatively* availing itself of the relevant forum.”<sup>24</sup>

13 In *Calderon*, the objectors had defended other cases on their merits, “[b]ut that choice  
14 was made only *after* they were haled into the district court. . . .”<sup>25</sup> So the court refused to find  
15 waiver, reasoning, “[w]ithout an independent affirmative decision to seek relief in our courts,  
16 there can be no imputation of a conscious decision to settle all aspects of a dispute here.”<sup>26</sup> Like  
17 the defendants in *Calderon*, Ademiluyi did not make “a conscious decision to settle all aspects”  
18 of this dispute in Nevada. So I do not find that she waived her personal-jurisdiction challenge in  
19 this case by following her suit against Phillips to this forum after the Maryland court transferred  
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21 <sup>20</sup> *Dow Chemical Co. v. Calderon*, 422 F.3d 827, 835 (9th Cir. 2005).

22 <sup>21</sup> See 2:14-cv-507-MMD-CWH, ECF No. 1.

23 <sup>22</sup> See 2:14-cv-507-MMD-CWH, ECF No. 17.

24 <sup>23</sup> *Calderon*, 422 F.3d at 835.

25 <sup>24</sup> *Id.*

26 <sup>25</sup> *Id.* at 835–36.

27 <sup>26</sup> *Id.* at 836.

1 it here.<sup>27</sup>

2 **3. Moreira-Brown has not shown that his claim against Ademiluyi arises out of**  
3 **her forum-related activities.**

4 The second act that Moreira-Brown claims caused Ademiluyi to submit to the personal  
5 jurisdiction of the Nevada courts is that “she transacted business” by “speaking to a reporter  
6 Nevada.”<sup>28</sup> But Moreira-Brown has not shown that this contact was jurisdictionally meaningful.  
7 A review of the article reveals that all of Ademiluyi’s allegations against him and Phillips were  
8 plucked from the lawsuit or police report, not based on statements that Ademiluyi made to the  
9 reporter.<sup>29</sup> The only information that may have come directly from Ademiluyi to the reporter is  
10 found in the paragraph that reads:

11 Ademiluyi has had a Maryland law license since 2008. She said  
12 she is self-employed and works part time as outside counsel for a  
13 gaming company based in Canada. The Las Vegas Review-Journal  
typically does not name sexual assault victims, but Ademiluyi has  
agreed to be identified in this article.<sup>30</sup>

14 “For a State to exercise jurisdiction consistent with due process, the defendant’s suit-related  
15 conduct must create a substantial connection with the forum State.”<sup>31</sup> Even if I presume that  
16 there was some contact (telephonic, e-mail, etc.) by which Ademiluyi conveyed this information  
17 and consent to the *LVRJ* reporter, this information itself does not give rise to Moreira-Brown’s  
18 claims, which arise from the allegations in the complaint and police report.

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20 <sup>27</sup> Nor can Phillips be the anchor that tethers Ademiluyi to Nevada. “Due process requires that a  
21 defendant be haled into court in a forum State based on [her] own affiliation with the State, not  
22 based on the ‘random, fortuitous, or attenuated’ contacts [s]he makes by interacting with other  
23 persons affiliated with the State.” *Walden*, 134 S. Ct. at 1123 (quoting *Burger King Corp. v.*  
*Rudzewicz*, 471 U.S. 462, 475 (1985)). “A defendant’s relationship with a . . . third party,  
24 standing alone, is an insufficient basis for jurisdiction.” *Id.*

25 <sup>28</sup> ECF No. 43 at 9–10.

26 <sup>29</sup> See generally ECF No. 25 at 34–38.

27 <sup>30</sup> *Id.* at 34.

28 <sup>31</sup> *Walden*, 134 S. Ct. at 1121.

1 Evaluating Ademiluyi's relationship with Nevada yields an insufficient basis for personal  
2 jurisdiction. Ademiluyi is a Maryland resident, who sued in Maryland a lawyer whom she met at  
3 a conference in Florida, over events that she alleges occurred in Florida. But for the fact that the  
4 defendant lawyer—Phillips—happened to be a Nevada resident and successfully moved the  
5 Maryland court to transfer Ademiluyi's lawsuit to Nevada, Ademiluyi would have had no  
6 connection to Nevada. Phillips is also the only meaningful bridge connecting Moreira-Brown to  
7 Nevada.

8 The nature of the claims against Ademiluyi further illustrates the lack of a forum  
9 connection. Moreira-Brown alleges that he "has suffered and continues to suffer severe injury to  
10 his reputation, his professional standing as a member of the bar, has suffered and continues to  
11 suffer severe emotional distress affecting personal and familial relationships,"<sup>32</sup> but none of these  
12 injuries are felt in Nevada or caused by conduct of Ademiluyi in Nevada. Indeed, in decrying the  
13 Media Defendants' choice to reference him in an *LVRJ* article primarily focused on Phillips's  
14 troubles, Moreira-Brown inadvertently makes this point. He stresses that he has "never practiced  
15 law in the state of Nevada," has never "worked professionally with David Phillips," is "unknown  
16 in the state of Nevada," and was not "named as a defendant in any lawsuit brought by  
17 Ademiluyi."<sup>33</sup> And although "Ademiluyi alleges . . . that Jane Doe was sexually assaulted by"  
18 him, he swears that "Jane Doe has never confirmed [that] to" anyone in Nevada.<sup>34</sup> And he attests  
19 that "the Nevada public can have no interest in Herbert Moreira-Brown, an out of state attorney  
20 who simply attended a conference with Phillips and the defendants Ademiluyi and Jane Doe."<sup>35</sup>

21 The Supreme Court's recent specific-jurisdiction jurisprudence demonstrates that  
22 Ademiluyi's challenged conduct does not sufficiently connect her to Nevada. In *Walden v.*  
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24 <sup>32</sup> ECF No. 1 at 1.

25 <sup>33</sup> ECF No. 43 (Moreira-Brown affidavit) at ¶ 4.

26 <sup>34</sup> *Id.*

27 <sup>35</sup> ECF No. 25 at ¶ 16.

1 *Fiore*, the High Court stressed that “the defendant’s conduct . . . must form the necessary  
2 connection with the forum State”<sup>36</sup> and relied on *Calder v. Jones* to illustrate the type of contacts  
3 that are jurisdictionally relevant. In *Calder*, the Court found California to be “the focal point” of  
4 an allegedly libelous news story about actress Shirley Jones. Though the story originated from  
5 the *National Enquirer* in Florida, the Court found that “[i]t impugned the professionalism of an  
6 entertainer whose television career was centered in California,” the “article was drawn from  
7 California sources, and the brunt of the harm, in terms of both [Jones’s] emotional distress and  
8 the injury to her professional reputation, was suffered in California.”<sup>37</sup>

9 This case presents the converse of *Calder*. Although Moreira-Brown’s lawsuit was  
10 triggered by an *LVRJ* article written in Nevada, “the focal point” of the story and the harm, as far  
11 as Moreira-Brown and this lawsuit are concerned, is elsewhere. Moreira-Brown is an attorney in,  
12 and resident of, New York;<sup>38</sup> the article—to the extent it relates to Moreira-Brown—is drawn  
13 from sources in Maryland, Florida, and New York; and the alleged injury to his reputation and  
14 his familial relationships would be suffered in New York. In short, the effects of the conduct that  
15 forms the basis for Moreira-Brown’s suit against Ademiluyi are felt in New York, not Nevada.<sup>39</sup>

16 In sum, Moreira-Brown has not made a prima facie case that Ademiluyi’s suit-related  
17 conduct has a substantial connection with this forum. I thus grant Ademiluyi’s motion to dismiss  
18 for lack of personal jurisdiction and dismiss the claims against her on this basis.

19 **B. Moreira-Brown’s suit against the Media Defendants must be dismissed under**  
20 **Nevada’s anti-SLAPP suit laws.**

21 “SLAPP lawsuits abuse the judicial process by chilling, intimidating, and punishing  
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23 <sup>36</sup> *Walden*, 134 S. Ct. at 1122.

24 <sup>37</sup> *Calder v. Jones*, 465 U.S. 783, 788–89 (1984) (cited with approval in *Walden*, 134 S. Ct. at  
25 1123).

26 <sup>38</sup> ECF No. 25 at ¶ 1.

27 <sup>39</sup> See *Calder*, 465 U.S. at 789–90 (finding that the *National Enquirer* “knew that the brunt of that  
28 injury would be felt by respondent in the State in which she lives and works”).



1 individuals for their involvement in public affairs.”<sup>40</sup> To curb these abusive lawsuits, Nevada’s  
2 legislature has adopted anti-SLAPP laws that immunize protected speakers from suit. Codified  
3 at NRS 41.660 et seq., Nevada’s anti-SLAPP statutes permit a defendant to bring a special  
4 motion to dismiss an action “brought against a person based upon a good faith communication in  
5 furtherance of the right . . . to free speech in direct connection with an issue of public concern.”<sup>41</sup>  
6 This procedural mechanism “filters unmeritorious claims in an effort to protect citizens from  
7 costly retaliatory lawsuits arising from their right to free speech under both the Nevada and  
8 Federal Constitutions.”<sup>42</sup>

9 The parties’ burdens when litigating a special motion under Nevada’s anti-SLAPP statute  
10 were clarified by the Nevada Supreme Court this summer in *Delucchi v. Songer*.<sup>43</sup> The moving  
11 party must first establish by a preponderance of the evidence that the claim challenges a good-  
12 faith “communication in furtherance of the right . . . to free speech in direct connection with an  
13 issue of public concern.”<sup>44</sup> The burden then shifts to the plaintiff to establish “by clear and  
14 convincing evidence a probability of prevailing on the claim.”<sup>45</sup> “If the district court determines  
15 that the plaintiff has shown by clear and convincing evidence a likelihood of succeeding on the  
16 merits, the determination on the special motion has no effect on the remainder of the  
17 proceedings.”<sup>46</sup> But if the court grants the special motion to dismiss, “the dismissal operates as  
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20 <sup>40</sup> *John v. Douglas Cty. Sch. Dist.*, 219 P.3d 1276, 1281 (Nev. 2009), superseded by statute on  
21 other grounds as stated in *Shapiro v. Welt*, 389 P.3d 262, 266 (Nev. 2017).

22 <sup>41</sup> Nev. Rev. Stat. § 41.660(1)(a).

23 <sup>42</sup> *John*, 219 P.3d at 1282.

24 <sup>43</sup> *Delucchi v. Songer*, 396 P.3d 826 (Nev. 2017).

25 <sup>44</sup> *Delucchi*, 396 P.3d at 831 (quoting Nev. Rev. Stat. § 41.660(3)(a)).

26 <sup>45</sup> *Id.* (quoting Nev. Rev. Stat. § 41.660(3)(b)).

27 <sup>46</sup> *Id.* (quoting Nev. Rev. Stat. § 41.660(3)(c)(1)–(2)).

1 an adjudication upon the merits.”<sup>47</sup>

2 **1. Moreira-Brown’s claims challenge a good-faith communication in**  
3 **furtherance of the right to free speech in direct connection with an issue of**  
4 **public concern.**

5 Each of Moreira-Brown’s claims against the Media Defendants challenges speech  
6 protected by Nevada’s anti-SLAPP statutes. The introduction of his complaint captures the  
7 essence of all claims: “This is an action for money damages arising from . . . the publication of a  
8 false, libelous and defamatory Article about the Plaintiff on August 24, 2014.”<sup>48</sup> The article was  
9 written by journalist Thevenot and published in the *LVRJ*, Southern Nevada’s main newspaper.<sup>49</sup>  
10 The article that sits at the heart of each of Moreira-Brown’s claims is undoubtedly the type of  
11 classic journalism subject to First Amendment free-speech protections.<sup>50</sup>

12 But this court need not “wrestle with difficult questions of constitutional law” to  
13 determine whether Moreira-Brown’s claims are barred by the anti-SLAPP laws.<sup>51</sup> As the  
14 *Delucchi* court held, “a defendant’s conduct constitutes ‘good faith communication in  
15 furtherance of the right . . . to free speech in direct connection with an issue of public concern’ if  
16 it falls within one of the four categories enumerated in NRS 41.637 and ‘is truthful or is made  
17 without knowledge of its falsehood.’”<sup>52</sup> The Media Defendants’ conduct satisfies this standard.

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19 <sup>47</sup> Nev. Rev. Stat. § 41.660(5).

20 <sup>48</sup> ECF No. 1 at 1, ¶ 1.

21 <sup>49</sup> ECF No. 25 at 33 (article).

22 <sup>50</sup> See, e.g., *Doe v. Gangland Productions, Inc.*, 730 F.3d 946, 953–54 (9th Cir. 2013) (collecting  
23 authorities and recognizing that newsgathering is protected speech under California’s sister  
24 statute); *Shapiro*, 389 P.3d at 268 (noting that Nevada “look[s] to California law for guidance”  
25 on anti-SLAPP issues because their “statutes are similar in purpose and language”) (internal  
26 citations omitted).

27 <sup>51</sup> *Delucchi*, 396 P.3d at 833 (quoting *City of Montebello v. Vasquez*, 376 P.3d 624, 633 (Cal.  
28 2016)).

<sup>52</sup> *Id.* (citations omitted).

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2           **a.       The article is a written statement in direct connection with an issue**  
3                   **under consideration by a judicial body.**

4           The third category of public concerns enumerated in NRS 41.637 is a “[w]ritten or oral  
5 statement made in direct connection with an issue under consideration by a . . . judicial body, or  
6 any other official proceeding authorized by law.”<sup>53</sup> The article falls squarely into this category.  
7 The headline of the article is “*Lawyer faces charges from Nevada’s State Bar, rape allegation*,”  
8 and the main subject of the article is “veteran Las Vegas lawyer David Phillips,” who was the  
9 subject of seven grievances filed with the State Bar of Nevada and Ademiluyi’s “unrelated . . .  
10 federal lawsuit accusing Phillips of raping her at a legal conference in 2012.”<sup>54</sup> Moreira-Brown  
11 argues that the article’s mentioning of him is not “an issue of public interest” because he “is so  
12 tangential and removed from the issue of grievance charges against Phillips as to fail the test of  
13 having a direct connection to an issue of public interest” and, at a minimum, the reporter’s  
14 recounting that he “faced rape allegations in the past[,] which derailed a Congressional bid” “had  
15 no direct or even indirect connection” to Ademiluyi’s suit.<sup>55</sup> There are two problems with  
16 Moreira-Brown’s characterization: (1) Ademiluyi’s complaint contains sexual-assault allegations  
17 against him, too; and (2) he views “an issue of public interest” far more narrowly than the law  
18 does.

19           Although Ademiluyi named Phillips as the only defendant in her lawsuit, her complaint  
20 contains the allegations that Moreira-Brown “administered a date rape drug” in her beverage and  
21 that of Jane Doe “without their knowledge and consent” and that he then “engaged in sexual  
22 intercourse with Ms. Doe.”<sup>56</sup> She describes in her complaint the scene of the 2012 National Bar  
23 Association conference at which she claims that “Mr. Phillips and Mr. Moreira-Brown conspired

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25           <sup>53</sup> Nev. Rev. Stat. § 41.637(3).

26           <sup>54</sup> ECF No. 25 at 34 (article at 2).

27           <sup>55</sup> *Id.* at 20–21.

28           <sup>56</sup> ECF No. 7-4 at 3.

1 to and did take” her “from the party to Mr. Phillips[’s] hotel room” where he “had sexual  
2 intercourse with her while she was under the influence of the date rape drug.”<sup>57</sup> She alleges that  
3 “Ms. Doe also reported that she lost memory but recalls Hebert [sic] Moreira Brown, Esq. taking  
4 her to his room, feeling [him] on top of her and telling him ‘no, stop,’ and woke up the next  
5 morning and could feel that he had sexual intercourse with her.”<sup>58</sup> Whether it is true—as  
6 Moreira-Brown opines—that “[t]he Nevada public can have no public interest in the mentioning  
7 of a New York attorney in a suit against a Nevada attorney,” Thevenot’s reporting of the  
8 allegations against him qualify as “an issue of public concern” under the plain language of the  
9 statute: they are written statements “made in direct connection with an issue under consideration  
10 by a . . . judicial body. . . .”<sup>59</sup> And it is the statutory definition, not a colloquial understanding of  
11 it, that controls.<sup>60</sup>

12       Moreira-Brown contends that Thevenot’s mentioning of his failed Congressional bid— a  
13 part of his history that does not appear in Ademiluyi’s complaint—takes her article outside of the  
14 statute’s protection. This argument requires the court to construe the statute too narrowly. NRS  
15 41.637(3) protects any written “statement made in direct connection with an issue under  
16 consideration” in Ademiluyi’s lawsuit.<sup>61</sup> The article’s statement that Moreira-Brown “has faced  
17 rape allegations in the past” and that his 1998 Congressional campaign “was derailed after a  
18 different woman accused him of rape, though a grand jury later declined to indict him” is directly  
19 related to “an issue under consideration” in Ademiluyi’s suit. When describing in the complaint  
20 the difficulties she had getting law enforcement to take action on her allegations, Ademiluyi  
21 suggests that police should have run a background check and that it would have revealed that  
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23 <sup>57</sup> *Id.* at 6, 23.

24 <sup>58</sup> *Id.* at 10.

25 <sup>59</sup> Nev. Rev. Stat. § 41.637(3).

26 <sup>60</sup> *Delucchi*, 396 P.3d at 833.

27 <sup>61</sup> Nev. Rev. Stat. § 41.637(3).

1 Moreira-Brown “had been accused of sexual assault in the past” and that he “had a history of  
2 being arrested for . . . violent crimes.”<sup>62</sup> Even if the derailing of his Congressional bid is not  
3 specifically recounted in the complaint, this representation in the article easily qualifies as a  
4 statement made “in direct connection with” those past accusations of sexual assault.

5 **b. The statements were truthful or without knowledge of their**  
6 **falsehood.**

7 The Media Defendants have also established that the statements in the article were  
8 truthful or not made with knowledge of their falsehood. Moreira-Brown stresses that he denies  
9 Ademiluyi’s allegations, and he notes that Jane Doe has been unwilling to confirm her  
10 allegations, and that there has not even been “a semblance of police investigation.” But those  
11 points attack the allegations *in the complaint*, not the statements in the article, on which NRS  
12 41.637(3) focuses and so must I. And a careful, side-by-side comparison of Ademiluyi’s  
13 complaint and Thevenot’s article reveals no misrepresentations of the allegations in that  
14 lawsuit.<sup>63</sup> The author noted each time she was summarizing allegations from the complaint,  
15 peppering the article with “The lawsuit said,” “the lawsuit alleges,” and “In court papers”<sup>64</sup>  
16 qualifiers. The other references in the article that are not identified as sourcing from Ademiluyi’s  
17 complaint were summaries of statements Moreira-Brown provided during a phone interview  
18 (none of which he contends are misconstrued) and the report that Moreira-Brown’s  
19 Congressional bid was derailed after a different woman accused him of rape (which he also does  
20 not deny).<sup>65</sup>

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21  
22 <sup>62</sup> ECF No. 7-4 at 11.

23 <sup>63</sup> Compare ECF No. 7-4 at 2–33 with ECF No. 25 at 33–38.

24 <sup>64</sup> See ECF No. 25 at 34–36.

25 <sup>65</sup> He describes the situation as “a 1998 incident, in the Bronx where there was no indictment or  
26 actual arrest,” and in which he “was falsely accused in 1998.” ECF No. 25 at 6, 15. And  
27 although he complains about the “inflammatory” nature of the word “rape,” he at no point denies  
28 that his Congressional campaign was derailed in 1998 after a different woman accused him of  
rape. See *id.* at 6, 7, 15, 21.

1           Instead Moreira-Brown argues that the article “belies both the good faith and lack of  
2 knowledge of falsity prerequisites” because it “fails to mention the nature of the complaint or” its  
3 200 pages of exhibits.<sup>66</sup> The “nature” he’s suggesting is that the “complaint is so rambling and  
4 incoherent as to warrant the suggestion that the allegations may be the product of mental illness  
5 rather than its source.”<sup>67</sup> Having seen many a rambling complaint, I would not put Ademiluyi’s  
6 in that category. And Moreira-Brown’s opinion that the lawsuit is “the product of mental illness”  
7 is just that—his opinion. Thevenot’s failure to characterize the lawsuit or its proponent the way  
8 Moreira-Brown perceives them does not render the article about the lawsuit untruthful or  
9 knowingly false. The story even includes Moreira-Brown’s viewpoint: Thevenot reports that he  
10 “was unaware of any accusations against him” and that he insists that he “didn’t have sex with  
11 anyone on that trip,” “has never possessed a date rape drug and doesn’t know anyone by the true  
12 name for Jane Doe. . . .”<sup>68</sup>

13           Finally, Moreira-Brown suggests that Thevenot’s use of the word “rape” shows a lack of  
14 good faith because that word does not appear in the complaint “in the context of” him.<sup>69</sup> But the  
15 second paragraph of the complaint contains both his name and the word “rape”:

16                     During an evening party . . . Mr. Phillips and Herbert Moreira-  
17                     Brown, Esq. administered a date rape drug into the beverages of  
18                     Ms. Ademiluyi and Ms. Jane Doe without their knowledge and  
19                     consent and Mr. Moreira Brown engaged in sexual intercourse with  
20                     Ms. Doe and Mr. Phillips engaged in sexual intercourse with Ms.  
21                     Ademiluyi.<sup>70</sup>

22           And there is a handful of other allegations that can fairly be summarized as “rape” allegations,  
23 like the allegation in paragraph 31 that Ms. Doe “reported that she lost memory” but remembers  
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25           <sup>66</sup> ECF No. 25 at 22.

26           <sup>67</sup> *Id.*

27           <sup>68</sup> *Id.* at 35.

28           <sup>69</sup> ECF No. 25 at 25.

<sup>70</sup> ECF No. 7-4 at 3, ¶ 2.

1 “Moreira Brown, Esq. taking her to his room, feeling Mr. Moreira Brown on top of her and  
2 telling him ‘no, stop,’ and woke up the next morning and could feel that he had sexual  
3 intercourse with her. When she awoke, Mr. Moreira-Brown told her, ‘you better not tell anybody  
4 about this.’”<sup>71</sup>

5 In sum, the Media Defendants have carried their burden to show by a preponderance of  
6 the evidence that Moreira-Brown’s claims challenge a good-faith “communication in furtherance  
7 of the right . . . to free speech in direct connection with an issue of public concern.”<sup>72</sup> So, the  
8 burden shifts to Moreira-Brown to establish “by clear and convincing evidence a probability of  
9 prevailing on” his claims.<sup>73</sup>

10 **2. Moreira-Brown has not shown his probability of success on his defamation**  
11 **claim by clear and convincing evidence.**

12 Moreira-Brown’s first claim for relief is defamation. “Defamation is a publication of a  
13 false statement of fact.”<sup>74</sup> “The general elements of a defamation claim require a plaintiff to  
14 prove: ‘(1) a false and defamatory statement by a defendant concerning the plaintiff; (2) an  
15 unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4)  
16 actual or presumed damages.’”<sup>75</sup>

17 In espousing the merits of his defamation claim, Moreira-Brown focuses on the  
18 defamatory part, stressing that the rape allegations are “so inflammatory, prejudicial and  
19 defamatory, per se,” not “fair, accurate and impartial.”<sup>76</sup> But he has not demonstrated that the  
20

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21 <sup>71</sup> *Id.* at 10, ¶ 31; *see also* Black’s Law Dictionary at 1374 (9th ed.) (defining “rape” to include  
22 “unlawful sexual intercourse with a person who is unconscious”).

23 <sup>72</sup> *Delucchi*, 396 P.3d at 831 (quoting Nev. Rev. Stat. § 41.660(3)(a)).

24 <sup>73</sup> *Id.* (quoting Nev. Rev. Stat. § 41.660(3)).

25 <sup>74</sup> *Pegasus v. Reno Newspapers, Inc.*, 57 P.3d 82, 87 (Nev. 2002).

26 <sup>75</sup> *Id.* at 90.

27 <sup>76</sup> ECF No. 25 at 16.

Media Defendants made any false statements. To be sure, Moreira-Brown vehemently denies the accusations in Ademiluyi’s complaint. But *the article* does not level the rape-drug and sexual-assault accusations against Moreira-Brown; it summarizes those allegations that Ademiluyi made in her complaint.<sup>77</sup> And Moreira-Brown has not shown that the article’s summary contains falsities.

**a. The bulk of the article is immunized by the fair-reporting privilege.**

Even if Ademiluyi’s accusations in her complaint are false and the Media Defendants could bear defamation liability for republishing them,<sup>78</sup> that republication is protected by the fair-reporting privilege. A statement is not defamatory if it is privileged.<sup>79</sup> “The law has long recognized a special privilege of absolute immunity from defamation given to the news media and the general public to report newsworthy events in judicial proceedings.”<sup>80</sup> Whether the privilege applies is a question of law.<sup>81</sup> “Certainly, the pleading in this case, a formal complaint, is covered under the rule of absolute privilege.”<sup>82</sup> So, as long as the “alleged defamatory statements were a fair and accurate report of a judicial proceeding, they are absolutely privileged, and the material recited will not support a defamation suit even if the statements were made maliciously and with knowledge of their falsity.”<sup>83</sup>

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<sup>77</sup> Compare ECF No. 7-4 at 2–33 with ECF No. 25 at 33–38.

<sup>78</sup> See *Flowers v. Carville*, 310 F.3d 1118, 1128 (9th Cir. 2002) (describing “the venerable principle that a person who repeats a defamatory statement is generally as liable as the one who first utters it”).

<sup>79</sup> *Lubin v. Kunin*, 17 P.3d 422, 427 (Nev. 2001).

<sup>80</sup> *Sahara Gaming Corp. v. Culinary Workers Union Local 226*, 984 P.2d 164, 166 (Nev. 1999).

<sup>81</sup> *Dorsey v. National Enquirer, Inc.*, 973 F.2d 1431, 1435 (9th Cir. 1992) (“When there is no dispute about the material facts, the ‘fair and true’ issue is generally one of law [that] can be decided by the court on summary judgment.”).

<sup>82</sup> *Sahara Gaming Corp.*, 984 P.2d at 167.

<sup>83</sup> *Id.*; see also *Lubin v. Kunin*, 17 P.3d at 426 (holding that “the district court correctly found that merely publishing the fact that a lawsuit alleging child abuse was filed would not be actionable”).



1           Moreira-Brown argues that “[w]hile Ademiluyi’s complaint facially meets this test,  
2 defendant’s reporting does not” because “Thevenot did not present Ademiluyi’s complaint, as it  
3 pertained to Moreira-Brown fairly, accurately and impartially.”<sup>84</sup> Having carefully compared the  
4 complaint and the article, I disagree. As the Ninth Circuit recognized in *Dorsey v. National*  
5 *Enquirer* when applying California’s analogous privilege, “an article that captures the substance  
6 of the proceedings constitutes a ‘fair and true’ report.”<sup>85</sup> The media defendant need not “justify  
7 every word of the alleged defamatory material that is published. The media’s responsibility lies  
8 in ensuring that the ‘gist or sting’ of the report—its very substance—is accurately conveyed.”<sup>86</sup>  
9 And “courts must accord media defendants a ‘certain amount of literary license’ and exercise a  
10 ‘degree of flexibility’ in determining what is a ‘fair report.’”<sup>87</sup>

11           Thevenot’s article offers a fair and true report of Ademiluyi’s lawsuit. Though the article  
12 delivers a painful sting, that sting is entirely derivative of the ugly allegations of reprehensible  
13 conduct described in the complaint. And though Ademiluyi did not use the word “rape” to  
14 describe the sexual assaults she alleges in her complaint, Thevenot’s use of the word does not  
15 render her report unfair. Very little literary license is required to transform the allegation that  
16 “Moreira-Brown, Esq., administered a date rape drug into the beverage[] of . . . Ms. Jane Doe  
17 without [her] knowledge and consent and Mr. Moreira Brown engaged in sexual intercourse with  
18 Ms. Doe”<sup>88</sup> into a “rape” allegation.<sup>89</sup> The fair-reporting privilege immunizes the Media  
19

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20 <sup>84</sup> ECF No. 25 at 24–25.

21 <sup>85</sup> *Dorsey*, 973 F.2d at 1436; *see also Lubin*, 17 P.3d at 427 (relying on *Dorsey* for the “fair and  
22 true” standard).

23 <sup>86</sup> *Dorsey*, 973 F.2d at 1436 (quoting *McClatchy Newspapers v. Superior Court*, 189 Cal. App.  
24 3d 961, 975 (Cal. Ct. App. 1987)).

25 <sup>87</sup> *Id.* (quoting *McClatchy Newspapers*, 189 Cal. App. 3d at 976).

26 <sup>88</sup> ECF No. 7-4 at ¶ 2.

27 <sup>89</sup> *See, e.g., Binder v. Triangle Publications, Inc.*, 275 A.2d 53, 58 (Pa. 1971) (noting that “[a]n  
28 action for defamation cannot be premised solely on defendant’s style or utilization of vivid words

1 Defendants from suit for Thevenot's summary of Ademiluyi's lawsuit.

2 **b. The rest of the article is not actionable.**

3 Not all of the article is a summary of Ademiluyi's lawsuit, however. The article goes  
4 beyond the lawsuit in two main ways with respect to Moreira-Brown.<sup>90</sup> First, it reports Moreira-  
5 Brown's response to the complaint: he denies the allegations. Importantly, he makes no claim  
6 that Thevenot inaccurately quoted him. Although he does complain that Thevenot failed to  
7 include in her article a photograph taken the day after the events that Ademiluyi describes,<sup>91</sup> I  
8 cannot conclude that the reporter's choice rendered anything about the article false, particularly  
9 when she presented Moreira-Brown's side of the story with his quoted denial.

10 Second, the article reports that Moreira-Brown's 1998 Congressional campaign was  
11 derailed due to rape allegations by another woman. Although Moreira-Brown thinks this history  
12 should be of no interest to the *LVRJ*'s readers, he nevertheless does not dispute it as false.<sup>92</sup>  
13 Indeed, it appears that the thrust of his grievance is that he was mentioned in Thevenot's story at  
14 all when—in his assessment—he was just a bit character in Ademiluyi's complaint, and the story  
15 should have been about Phillips alone. Moreira-Brown has not demonstrated by clear and  
16 convincing evidence that he will prevail on his defamation claim for any portion of Thevenot's

17 \_\_\_\_\_  
18 in reporting a judicial proceeding,” and finding characterization of relationships as a “bizarre  
19 love triangle” not defamatory).

20 <sup>90</sup> The article also recounts statements by Jane Doe, *see* ECF No. 25 at 35, but Moreira-Brown  
21 does not criticize Thevenot's report of those statements.

22 <sup>91</sup> ECF No. 25 at 25. Moreira-Brown did not attach this photograph to his opposition, but he  
23 moves to supplement his opposition to include it. ECF No. 73. Good cause appearing, I grant  
24 that motion. I caution Mr. Moreira-Brown, however, that requests for relief must be in the form  
25 of a motion, not the form of a letter. *See* L.R. IA 7-1(b) (“All communications with the court  
must be styled as a motion . . .”).

26 <sup>92</sup> *See supra* at § B(1)(a). He states in his affidavit in support of his opposition that he “was  
27 falsely accused in 1998,” ECF No. 25 at 6, ¶ 14, suggesting that he did, in fact, face rape  
28 allegations in 1998. And he makes no effort to deny that “[h]is 1998 campaign for a seat in the  
U.S. House of Representatives from New York was derailed after a different woman accused him  
of rape, though a grand jury later declined to indict him.” ECF No. 25 at 35.

1 article.

2 **3. Moreira-Brown has not shown a probability of success on his emotional-**  
3 **distress claims.**

4 Nor has Moreira-Brown shown that he will prevail on his claims for negligent or  
5 intentional infliction of emotional distress. To recover for intentional infliction of emotional  
6 distress, Moreira-Brown must show: “(1) extreme and outrageous conduct with either the  
7 intention of, or reckless disregard for, causing emotional distress, (2) the plaintiff’s having  
8 suffered severe or extreme emotional distress and (3) actual or proximate causation.”<sup>93</sup> Negligent  
9 infliction of emotional distress requires “either a physical impact must have occurred or, in the  
10 absence of physical impact, proof of ‘serious emotional distress’ causing physical injury or  
11 illness. . . .”<sup>94</sup>

12 Moreira-Brown has not even attempted to meet this burden. His affidavit does not  
13 contain even a hint that he has suffered severe emotional distress as a result of the article, let  
14 alone distress causing the physical injury or illness necessary to state a negligent-infliction-of-  
15 emotional-distress claim.<sup>95</sup> His argument in opposition to the motion to dismiss on these claims  
16 consists of a few conclusory sentences: “Plaintiff’s description of the contents of the article  
17 which reasonably viewed in context satisfies the requirement of extreme and outrageous conduct.  
18 . . . Defendants [sic] article insofar as it can reasonably be construed as implying that Moreira-  
19 Brown is a sexual predator and has a history of such behavior evinces extreme and outrageous  
20 conduct. Both defendants are liable for the damages resulting from such conduct.”<sup>96</sup> He does not  
21 address the Media Defendants’ argument that the emotional-distress and physical-injury  
22 components are missing. And even if I were to find that these conclusory statements satisfy the

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24 <sup>93</sup> *Olivero v. Lowe*, 995 P.2d 1023, 1025 (Nev. 2000) (quoting *Star v. Rabello*, 625 P.2d 90,  
25 91–92 (Nev. 1981) (citations omitted)).

26 <sup>94</sup> *Olivero* (quoting *Barmettler v. Reno Air, Inc.*, 956 P.2d 1382, 1386–87 (Nev. 1998)).

27 <sup>95</sup> See ECF No. 25 at 2–9.

28 <sup>96</sup> ECF No. 25 at 30.

1 extreme-and-outrageous-conduct element, Moreira-Brown has not addressed the merits of the  
2 other elements. Moreira-Brown has thus not shown a likelihood of prevailing on any claim.

3 Accordingly, I find that all of plaintiffs' claims against the Media Defendants must be  
4 dismissed under NRS 41.637(3). So I dismiss all remaining claims with prejudice on this basis,  
5 and I do not reach the Media Defendants' remaining arguments.

6 **Conclusion**

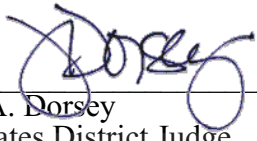
7 IT IS THEREFORE ORDERED that Herbert Moreira-Brown's request to supplement his  
8 opposition to Ademiluyi's motion to dismiss **[ECF No. 73] is GRANTED;**

9 IT IS FURTHER ORDERED that April Ademiluyi's Motion to Dismiss **[ECF No. 34] is**  
10 **GRANTED; all claims against April Ademiluyi are DISMISSED for lack of personal**  
11 **jurisdiction;**

12 IT IS FURTHER ORDERED that the Las Vegas Review Journal, Inc. and Carri Geer  
13 Thevenot's Motion to Dismiss **[ECF No. 7] is GRANTED in part and DENIED in part** as  
14 stated in this order. Because I GRANT the Media Defendants' motion to dismiss under NRS  
15 41.637, I do not reach their remaining arguments. **All claims against the Las Vegas Review**  
16 **Journal, Inc. and Carri Geer Thevenot are DISMISSED with prejudice under NRS 41.637.**

17 The Clerk of Court is directed to **CLOSE THIS CASE.**

18 DATED: September 18, 2017.

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21 Jennifer A. Dorsey  
22 United States District Judge  
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